IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 118 of 2003 (S/B)

Pradeep Lal Sah and others ……. Petitioners

Versus

Registrar Co-operative Societies,
Uttaranchal, Dehradun & others. …….. Respondents

Date of decision: 7th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 118 of 2003 (S/B)

Pradeep Lal Sah & others ……. Petitioners

Versus

Registrar, Co-operative Societies,
Uttaranchal, Dehradun & others……. Respondents

Mr. Manoj Tiwari, learned counsel for the petitioners.
Mr. Shobhit Saharia, Advocate i/b Mr. U.K. Uniyal,
learned senior counsel for respondent No. 1.
Mr. B.D. Upadhyaya, learned counsel for respondent No. 3.

Hon'ble P.C. Pant, J.

This writ petition has been moved under article 226 of the Constitution of India for mandamus directing the respondent Nos. 1 and 2 to consider promotion of petitioners to the post of Co-operative Inspector Group II w.e.f. the year of recruitment. It is further prayed that the order 07.03.2002 giving promotion to respondent No. 3 be quashed.

2) Brief facts of the case as per the writ petition are that the petitioners were appointed on the post of Co-operative Supervisor Group III on regular posts in the year 1978 and 1979. All the petitioners after their appointment underwent necessary training and since then continuously serving in the Co-operative Department with unblemished record. The services of the petitioners are governed by Subordinate Co-operative Service Rules, 1979 which regularize and provides mode of recruitment and conditions of service of Co-operative Inspectors Group I, Group II and Group III. Under Rule 5 of said Rules, source of recruitment to the post of Co-operative Inspector Group I is to

the extent of 50% by direct recruitment and rest by promotion from amongst the Co-operative Inspector Group II in consultation with the Public Service Commission. Rule 5 further provides that the recruitment to the post of Co-operative Inspectors Group II shall be made by direct recruitment through Public Service Commission; ands also that the Co-operative Inspectors Group III / Co-operative Supervisors are also entitled to be recruited by promotion to the post of Co-operative Inspectors Group II. The percentage fixed under Rule 6 is 66% for direct recruitment to Co-operative Inspector Group II and remaining 34% by promotion as above. In the Co-operative Department a separate hill cadre under U.P. Hill Sub Cadre Rules, 1992 was carved out to which all the petitioners except petitioner Nos. 4 and 5 belonged. Petitioner Nos. 4 and 5 though not members of said cadre but continuing in service in District Udham Singh Nagar part of Uttaranchal and after creation of the new State vide order dated 12.02.2001 they stand allocated the State of Uttaranchal, as their appointing authority was Deputy Registrar, Co-operative Societies, Nainital which is a Regional authority. On creation of the hill sub cadre as mentioned above some more than 35 posts of Co-operative Inspectors Group II fell vacant in the hill Districts between 1992 and 1995. The Deputy Registrar, Co-operative Societies, Nainital constituted a selection committee for considering the claim of the Co-operative Inspectors Group III for their promotion to Group II. However, only ad hoc promotions were made on temporary posts and petitioners were also promoted on ad hoc posts on 12.06.1995 except petitioner No. 7 who was promoted on 01.02.1996. Instead of extending the term of petitioners or regularizing them on the posts of Co-operative Inspector Group II they were revered vide order dated 29.07.1997 to the post of Co-operative

Supervisors / Co-operative Inspector Group III. The said act on the part of respondents was malafide to accommodate the petitioners who were to be promoted on ad hoc basis in place of the petitioners. Aggrieved by which petitioners knocked the doors of Allahabad High Court by filing writ petition No. 41198 of 1997; Ganga Singh Kunjwal V. The Registrar Co-operative Societies, U.P. Lucknow which was disposed of on 09.12.1997 and the same reads as under:

> *" Heard Sri Rajiv Sharma, learned counsel for the petitioner.*
>
> *The petitioner was promoted on the post of Co-operative Inspector Group II in the year 1995. Initially the appointment was fro 89 days only. This term of appointment was extended from time to time. Petitioner is said to be still working on the promoted post. By order dated 29.10.1997, the petitioner has been reverted back to his original post. Learned counsel for the petitioner pointed out that selection for the post of Co-operative Inspector Group Ii have not yet been made. There are vacancies. The order of reversion does not disclose any ground on which the petitioner has been reverted to its parent post.*
>
> *The writ petition is finally disposed of with the direction that the petitioner shall continue to man Co-operative Inspector Group II till a regularly selected candidate in his place is posted."*

However, so fare no regular promotion have been made to the post of Co-operative Inspectors Group Ii even though the promotion quota is lying vacant. But in 1997, it is alleged that 20 persons were appointed as Co-operative Inspectors Group II by direct recruitment on the recommendation of the Public Service

Commission Uttar Pradesh keeping the quota of promotees vacant. Total number of posts of Co-operative Inspector Group II in Uttaranchal are 156 out of which 66% that is 103 are meant for direct recruitment and rest 53 posts are for promotees. The respondent never tried to fill the promotion quota on the regular posts instead from time to time made ad hoc promotion only. In the year 2001, Registrar Co-operative Societies (respondent No. 1) constituted a Departmental Promotion Committee for making ad hoc promotion to the post of Co-operative Inspector Group II in pursuance whereof a meeting was held on 23.12.2001 and some 65 Co-operative Supervisors / Co-operative Inspector Group III were recommended fro their promotion to the post of Co-operative Inspector II. While making said recommendations for promotions it is alleged that junior persons have been picked up leaving the senior persons like petitioners who have been working for seven years on promotional post on ad hoc basic. One of such junior was respondent No. 3 namely, Arvind Joshi, who has been promoted further vide order dated 07.03.2002 now to the post of Co-operative Inspector Group I in the pay scale of Rs. 5000-6000 (copy Annexure 6-A to the writ petition). Infact, respondent No. 3 was appointed as Investigator cum Statistical Assistant in the year 1995 and was serving in said capacity. In the writ petition it is alleged that said posts was equivalent to the post of Co-operative Inspector Group III. His promotion to the post of Co-operative Inspector Group I is alleged to be illegal and arbitrary. Meanwhile, by order dated 24.12.2001 some other 49 persons have been appointed as Co-operative Inspector Group I. The petitioners are claiming their regular promotion to the post of Co-operative Inspector Group II and have made several representations but to no avail. Hence the writ petition.

3) Counter affidavit have been filed on behalf of respondent No. 1 and respondent No. 3 separately and the claim of the petitioners have been contested. According to the counter affidavit filed on behalf of respondent No. 1, the petitioners have not narrated the facts correctly and their continuance on the post of C-operative Inspector Group II on ad hoc post is only till regularly selected candidates are posted as directed by the Allahabad High Court in the writ petition NO. 41198 of 1997. The allegation of illegality as to the promotion of respondent No. 3 is alleged to be baseless and misconceived as he has been selected through U.P. Subordinate Service Selection Commission and was appointed as Investigator cum Computer by order dated 18.02.1995 in the pay scale of Rs. 1400-2300 which is a scale higher than that of the pay scale of Co-operative Inspector Group II. The pay scale of Co-operative Inspector Group II was Rs. 1350-2200 at that point to time. As such the petitioners have wrongly drawn parity with the respondent No. 3. In the counter affidavit of respondent No. 1, it is further stated that petitioners are actually employees of Provincial Co-operative Union of Apex Co-operative Society under the U.P. Co-operative Societies Act, 1965. The assets and liabilities of the Provincial co-operative Union between Uttar Pradesh and Uttaranchal are yet not final and nor formally divided between the two which is in the process of division. In para 8 of this counter affidavit it is further stated that since seniority list of Provincial Co-operative Union (PCU) employees serving in Uttaranchal has yet not been finalised as such combined seniority list with the different categories of the Co-operative Supervisors cannot be finalised that is why only ad hoc promotions are being done under Rule 19(2) of Subordinate Co-operative Service Rule 1979 and promotees on ad hoc basis can be reverted back to their original post at any time. The post

of Statistical Assistant is not equivalent to that of the Co-operative Supervisor as alleged by the petitioners and the same vide Notification dated 11.11.1982 have been changed to the post of Investigator-cum-Computer on higher pay scale. Respondent No. 3, in his counter affidavit has defended his promotion and reiterated almost the pleas as contained in the aforesaid earlier counter affidavit filed on behalf of respondent No. 1.

4) I heard learned counsel for the parties at length and perused the recored.

5) The main question for consideration before this Court is whether the promotion of respondent No. 3 to the post of Co-operative Inspector Group I is not legal and whether the petitioners are wrongly denied regular promotion to the post of Co-operative Inspector Group II as prayed by them?

6) Admittedly, the petitioners were appointed in the year 1978-79 as Co-operative Supervisors which is equivalent to the post of Co-operative Inspector Group III. It is also not disputed that respondent No. 3 has been appointed directly to the post of Investigator-cum-Computer in the year 1995 while the petitioners were promoted on ad hoc basis to the post of Co-operative Inspector Group II on 12.06.1995 except petitioner No. 6 who was promoted on 01.02.1996. Learned counsel for the petitioners could not deny that the pay scale of the respondent No. 3 as Investigator –cum-Computer was Rs. 1400-2300 while that of the Co-operative Inspector Group II was Rs. 1350-2200. As such parity drawn with respondent No. 3 is not reasonable and nor the petitioners are affected by the regular appointment made through U.P. Subordinate Service Selection Commission of Mr. Arvind Joshi in the year 1995 on a post which was higher to that of one held by the petitioners. That being so, promotion of Mr. Arvind

Joshi, respondent No. 3 to post of Co-operative Inspector Group I (which too is on ad hoc basis) cannot be said to be illegal.

7) Mr. Manoj Tiwari, learned counsel for the petitioners drew my attention to Clause- K of Rule 3 of Subordinate Co-operative Service Rules, 1979 in which Statistical Assistant has been included within the meaning of Co-operative Inspector Group III and it is argued that the post held by Mr. Arvind Joshi is not above that of the Co-operative Supervisor. In my opinion, the argument is misconceived for the reason that the post held at the entry point through Selection Commission by respondent No. 3 is not simple Statistical but is that of Investigator-cum-Statistical Assistant-cum-Computer.

8) Perusal of Annexure to Government Order No. 5579/12-C/2-209/79-82 which is at page 12 to the counter affidavit filed by respondent No. 3 clearly shows that once the post of Statistical Assistant is upgraded to the higher pay scale it shall be filled through Service Commission.

9) In view of the above discussions, parity drawn by the petitioners with respondent No. 3 is misconceived and the petition is devoid of merits and liable to be dismissed to that extent relating to relief sought challenging promotion of respondent No. 3 However, as to the promotion of the petitioners to the Co-operative Inspector Group II, the respondent No. 1 and 2 may consider their regular promotion according to the rules. Accordingly, writ petition is disposed of with aforesaid observation.

(P.C. Pant, J.)

Dt. 7th August 2004.
H.Negi